

EXHIBIT B-1



Frank C. Brame
The Brame Law Firm P.C.
3333 Lee Parkway, Suite 600
Dallas, Texas 75219
frank@bramelawfirm.com
214.665.9464 (ph.)
214.665.9590 (fax)

November 26, 2018

Sent By Online Request

FOIA/PA Request
FOIA and Transparency
Department of the Treasury
Washington, D.C. 20220

Dear Sir:

In accordance with the Freedom of Information Act ("FOIA"), I make the following requests for information.

This request is made under FOIA and any statute providing for public access to government information.

This firm is counsel to Saul Ortega and David Rogers. The purpose of this request is to gather public records about the administrative law judges who are conducting the following hearing against my clients: In re Saul Ortega and David Rogers, AA-EC-2017-44 & 45, In the Office of the Comptroller of the Currency (the "Enforcement Action").

I request that I be sent copies of the following documents or, if there are a large number, be permitted to inspect the following documents and receive one copy of the ones I would like. Either electronic or paper format is fine. I will pay fees assessed under FOIA. If the fees will exceed \$500, I would like you to contact me first.

frank@bramelawfirm.com

The Brame Law Firm P.C.

214.665.9464

Subject of Request (“Subject”)

Ratification of Administrative Law Judge Appointments signed by Steven T. Mnuchin on November 15, 2018

Documents Requested

1. All documents, cover letters, exhibits, and appendices that were attached to or submitted contemporaneously with the Ratification of Administrative Law Judge Appointments signed by Steven T. Mnuchin on November 15, 2018.
2. All documents provided to or reviewed by Steven T. Mnuchin (or his staff) prior to signing the Ratification of Administrative Law Judge Appointments signed by Steven T. Mnuchin on November 15, 2018.

This request is time sensitive. I have been ordered to provide a reply and comments to the OCC regarding the Subject of this request by no later than December 4, 2018. Therefore, we request compliance herewith by **December 3, 2018**. An email response is acceptable.

If you have any questions about the nature or scope of this request, please call me at the phone number listed above. If you determine that all or some portion of the information requested is excepted from required public disclosure under a particular exception, I request that you advise me as to which exceptions you believe apply.

Thank you for your timeliness and I await your response.

Sincerely,

A handwritten signature in black ink, appearing to read 'Frank C. Brame', with a stylized, cursive script.

Frank C. Brame

c. Bill Sims, Esq.

EXHIBIT B-2

Frank C. Brame

From: Frank C. Brame <frank@bramelawfirm.com>
Sent: Monday, December 17, 2018 2:08 PM
To: 'foia@treasury.gov'
Subject: Follow-up
Attachments: 12.7.18 FOIA Request (Department of Treasury).pdf

Dear sir – I write to follow up with your office on the attached request. Please let me know the status or if you have any information for me. Thanks very much, Frank

Frank C. Brame
The Brame Law Firm PLLC
frank@bramelawfirm.com
3333 Lee Parkway, Suite 600
Dallas, Texas 75219
214.665.9464 (office)
713.857.8925 (mobile)
www.bramelawfirm.com



Frank C. Brame
The Brame Law Firm P.C.
3333 Lee Parkway, Suite 600
Dallas, Texas 75219
frank@bramelawfirm.com
214.665.9464 (ph.)
214.665.9590 (fax)

December 7, 2018

Sent By U.S. Mail

FOIA/PA Request
FOIA and Transparency
Department of the Treasury
Washington, D.C. 20220

Dear Sir:

On November 26, 2018, I sent a FOIA letter by online request, seeking expedited relief by December 3. That request is attached hereto. To date, I have received no response. Please contact me as soon as possible to let me know the status of my request. Thank you.

Sincerely,

A handwritten signature in black ink, appearing to read "Frank C. Brame", written in a cursive style.

Frank C. Brame

c. Bill Sims, Esq. (by email)



Frank C. Brame
The Brame Law Firm P.C.
3333 Lee Parkway, Suite 600
Dallas, Texas 75219
frank@bramelawfirm.com
214.665.9464 (ph.)
214.665.9590 (fax)

November 26, 2018

Sent By Online Request

FOIA/PA Request
FOIA and Transparency
Department of the Treasury
Washington, D.C. 20220

Dear Sir:

In accordance with the Freedom of Information Act ("FOIA"), I make the following requests for information.

This request is made under FOIA and any statute providing for public access to government information.

This firm is counsel to Saul Ortega and David Rogers. The purpose of this request is to gather public records about the administrative law judges who are conducting the following hearing against my clients: In re Saul Ortega and David Rogers, AA-EC-2017-44 & 45, In the Office of the Comptroller of the Currency (the "Enforcement Action").

I request that I be sent copies of the following documents or, if there are a large number, be permitted to inspect the following documents and receive one copy of the ones I would like. Either electronic or paper format is fine. I will pay fees assessed under FOIA. If the fees will exceed \$500, I would like you to contact me first.

frank@bramelawfirm.com

The Brame Law Firm P.C.

214.665.9464

Subject of Request (“Subject”)

Ratification of Administrative Law Judge Appointments signed by Steven T. Mnuchin on November 15, 2018

Documents Requested

1. All documents, cover letters, exhibits, and appendices that were attached to or submitted contemporaneously with the Ratification of Administrative Law Judge Appointments signed by Steven T. Mnuchin on November 15, 2018.
2. All documents provided to or reviewed by Steven T. Mnuchin (or his staff) prior to signing the Ratification of Administrative Law Judge Appointments signed by Steven T. Mnuchin on November 15, 2018.

This request is time sensitive. I have been ordered to provide a reply and comments to the OCC regarding the Subject of this request by no later than December 4, 2018. Therefore, we request compliance herewith by **December 3, 2018**. An email response is acceptable.

If you have any questions about the nature or scope of this request, please call me at the phone number listed above. If you determine that all or some portion of the information requested is excepted from required public disclosure under a particular exception, I request that you advise me as to which exceptions you believe apply.

Thank you for your timeliness and I await your response.

Sincerely,

A handwritten signature in black ink, appearing to read 'Frank C. Brame', with a stylized, cursive script.

Frank C. Brame

c. Bill Sims, Esq.

EXHIBIT B-3

Frank C. Brame

From: Michelle.Henshaw@treasury.gov
Sent: Wednesday, December 19, 2018 9:30 AM
To: frank@bramelawfirm.com
Subject: FOIA 2018-11-128
Attachments: 2018-11-128_Ackn Ltr_denyexpedite-FW_FINAL.pdf

Good morning Mr. Brame,

Attached is a copy of our correspondence regarding your request. Currently a search for responsive records is being done.

Thank you,

Michelle Henshaw

Case Manager, FOIA & Transparency

Privacy, Transparency, and Records

Michelle.Henshaw@treasury.gov

Desk Phone: 202-622-0875



DEPARTMENT OF THE TREASURY
WASHINGTON, DC

November 28, 2018

Re: 2018-11-128

Mr. Frank Brame
The Brame Law Firm
3333 Lee Parkway, Suite 600
Dallas, TX 75219

Email: frank@bramelawfirm.com

SENT VIA EMAIL

Dear Mr. Brame:

This concerns your Freedom of Information Act (FOIA) request, submitted to Department of the Treasury, dated November 26, 2018. You are requesting the following:

- “1. All documents, cover letters, exhibits, and appendices that were attached to or submitted contemporaneously with the Ratification of Administrative Law Judge Appointments signed by Steven T. Mnuchin on November 15, 2018.*
- 2. All documents provided to or reviewed by Steven T. Mnuchin (or his staff) prior to signing the Ratification of Administrative Law Judge Appointments signed by Steven T. Mnuchin on November 15, 2018. If you have any questions about the nature or scope of this request, please call me at the phone number listed above.”*

Treasury Departmental Offices (DO) has initiated a search for records that would be responsive to your request. We will make every effort to provide you with a timely response; however, please be advised that unusual circumstances exist regarding the search for and review of potentially responsive records. The unusual circumstances are due to the consultation required between two or more program offices and/or a search is expected to result in voluminous records and/or a search is required to be conducted for records stored in field offices or warehouses off site; therefore, an additional processing extension of (10) days is required to process your requests.

You have requested expedited processing for your requests. The FOIA states that “each agency shall promulgate regulations ... providing for expedited processing of requests for records.”¹ There are two categories of requests that merit expedited review under Treasury’s FOIA regulations: (1) requests for which a lack of expedited treatment “could reasonably be expected

¹ See 5 U.S.C. § 552(a)(6)(E)(i)

to pose an imminent threat to the life or physical safety of an individual;” or (2) where there is an “urgency to inform the public about an actual or alleged Federal Government activity”, if made by a person primarily engaged in disseminating information.”²

In your request, you stated that “This request is time sensitive. I have been ordered to provide a reply and comments to the OCC regarding the Subject of this request by no later than December 4, 2018. Therefore, we request compliance herewith by December 3, 2018. An email response is acceptable.”

Based upon my review of the information contained in your request, and in consideration of the two factors identified above, I have determined to deny your request for expedited processing. You have not provided any evidence that information if not disseminated could pose an imminent threat to the life or physical safety of an individual or that there is an “urgency to inform the public about an actual or alleged Federal Government activity.”

You have the right to appeal adverse. Should you wish to do so, your appeal must be received within 90 days of the date of this letter. Your appeal must be in writing, signed by you or your representative, and should contain the rational for the appeal. Your appeal should be received by February 26, 2019, and addressed to the following address:

FOIA Appeal
FOIA and Transparency
Privacy, Transparency, and Records
Department of the Treasury
1500 Pennsylvania Ave., N.W.
Washington, D.C. 20220

We will review your request for a fee waiver once our office ascertains that the billable costs will exceed our \$25.00 billing threshold per request.

You may seek dispute resolution services from our Treasury FOIA Public Liaison by contacting Paul Levitan, Director, FOIA and Transparency at (202) 622-8098 or email FOIAPL@treasury.gov.

A FOIA Public Liaison is a supervisory official to whom FOIA requesters can raise questions or concerns about the agency’s FOIA process. FOIA Public Liaisons can explain agency records, suggest agency offices that may have responsive records, provide an estimated date of completion, and discuss how to reformulate and/or reduce the scope of requests in order to minimize fees and expedite processing time.

If you are unable to resolve your FOIA dispute through our FOIA Public Liaison, the Office of Government Information Services (OGIS) also mediates disputes between FOIA requesters and

² See 31 CFR § 1.5(e)

federal agencies as a non-exclusive alternative to litigation. If you wish to contact OGIS, you may contact the agency directly at the following address, emails, fax or telephone numbers:

Office of Government Information Services
National Archives and Records Administration
8601 Adelphi Road – OGIS
College Park, MD 20740-6001
Email: ogis@nara.gov
Telephone: 202-741-5770
Toll free: 1-877-684-6448
Fax: 202-741-5769

Your request is also being routed to the Office of the Comptroller of the Currency (OCC) for processing and direct response to you. Further inquiries to the OCC should be forwarded to the address below:

Office of the Comptroller of the Currency
Disclosure Services
400 7th Street, SW
Suite 3E-218, Mail Stop 6W-11
Washington, DC 20219
<http://foia-pal.occ.gov/> (email is through their portal)

You may reach me via telephone at (202) 622-0930, extension 2; or via email at FOIA@treasury.gov. Please reference the FOIA request number 2018-11-128 when inquiring about your request.

Sincerely,
**Michelle
Henshaw**

Michelle Henshaw
FOIA Case Manager, FOIA and Transparency
Privacy, Transparency, and Records

 Digitally signed by Michelle Henshaw
DN: cn=Michelle Henshaw, o=Privacy,
Transparency and Records, ou=FOIA & Transparency,
email=michelle.henshaw@treasury.gov, c=US
Date: 2018.11.28 11:08:45 -05'00'

EXHIBIT B-4



Frank C. Brame
The Brame Law Firm P.C.
3333 Lee Parkway, Suite 600
Dallas, Texas 75219
frank@bramelawfirm.com
214.665.9464 (ph.)
214.665.9590 (fax)

December 20, 2018

Sent By U.S. Mail and Email

FOIA APPEALS
FOIA and Transparency
Department of the Treasury
1500 Pennsylvania Ave, NW
Washington, D.C. 20220

Appeal for Expedited Processing

Dear Sir or Madam:

On November 26, 2018, I sent a FOIA letter by online request, seeking expedited relief by December 3. As I received no response, I followed up on December 7 and then again on December 17. I received no response until December 19, 2018. These materials are attached hereto for your review.

The December 19, 2018 response from the Treasury Department denied my request for expedited treatment. A compelling need for expedited treatment exists in order to respond timely to a briefing schedule set forth by ALJ C. Richard Miserendino in proceedings before the OCC.

By this letter, I appeal that denial of my request as follows:

Treasury's denial of my request for expedited treatment was untimely. As such, the Treasury Department has waived the right to deny the request and the requester is entitled to expedited treatment. Pursuant to applicable regulations, the requester must be notified of the denial within 10 calendar days of the date of the request. 31 C.F.R. 1.5(3)(4). Here, that deadline was December 5, 2018.

frank@bramelawfirm.com

The Brame Law Firm P.C.

214.665.9464

However, no response was sent until December 19. It is worth noting that the denial letter has been dated November 28, 2018 and states “Sent Via Email.” No email was received by this office on that date or at any time before December 19, 2018.

Furthermore, it is instructive that Secretary Mnuchin purportedly signed the Ratification of Administrative Law Judge Appointments (“Ratification”) on November 15, 2018 and such document was provided to OCC Counsel, Frank Salamone, no later than November 19, 2018 (see attachment). He was apparently able to obtain enough information about it to file a detailed brief regarding it with the ALJ on November 20. Thus, if the Treasury Department was able to deliver such materials to my opposing counsel within **four days**, which included a weekend, there is no doubt that that it should be able to get documents that were attached to it to me on a similar timetable.

Therefore, I respectfully request that my appeal be granted and expedited treatment be provided.

Sincerely,



Frank C. Brame

- c. Bill Sims, Esq. (by email)
- FOIA Public Liaison (by email)
- Office of Government Information Services (by email)
- Michelle Henshaw (by email)

Frank C. Brame

From: Frank C. Brame <frank@bramelawfirm.com>
Sent: Monday, December 17, 2018 2:08 PM
To: 'foia@treasury.gov'
Subject: Follow-up
Attachments: 12.7.18 FOIA Request (Department of Treasury).pdf

Dear sir – I write to follow up with your office on the attached request. Please let me know the status or if you have any information for me. Thanks very much, Frank

Frank C. Brame
The Brame Law Firm PLLC
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3333 Lee Parkway, Suite 600
Dallas, Texas 75219
214.665.9464 (office)
713.857.8925 (mobile)
www.bramelawfirm.com



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3333 Lee Parkway, Suite 600
Dallas, Texas 75219
frank@bramelawfirm.com
214.665.9464 (ph.)
214.665.9590 (fax)

December 7, 2018

Sent By U.S. Mail

FOIA/PA Request
FOIA and Transparency
Department of the Treasury
Washington, D.C. 20220

Dear Sir:

On November 26, 2018, I sent a FOIA letter by online request, seeking expedited relief by December 3. That request is attached hereto. To date, I have received no response. Please contact me as soon as possible to let me know the status of my request. Thank you.

Sincerely,

A handwritten signature in black ink, appearing to read "Frank C. Brame", written in a cursive style.

Frank C. Brame

c. Bill Sims, Esq. (by email)



Frank C. Brame
The Brame Law Firm P.C.
3333 Lee Parkway, Suite 600
Dallas, Texas 75219
frank@bramelawfirm.com
214.665.9464 (ph.)
214.665.9590 (fax)

November 26, 2018

Sent By Online Request

FOIA/PA Request
FOIA and Transparency
Department of the Treasury
Washington, D.C. 20220

Dear Sir:

In accordance with the Freedom of Information Act ("FOIA"), I make the following requests for information.

This request is made under FOIA and any statute providing for public access to government information.

This firm is counsel to Saul Ortega and David Rogers. The purpose of this request is to gather public records about the administrative law judges who are conducting the following hearing against my clients: In re Saul Ortega and David Rogers, AA-EC-2017-44 & 45, In the Office of the Comptroller of the Currency (the "Enforcement Action").

I request that I be sent copies of the following documents or, if there are a large number, be permitted to inspect the following documents and receive one copy of the ones I would like. Either electronic or paper format is fine. I will pay fees assessed under FOIA. If the fees will exceed \$500, I would like you to contact me first.

frank@bramelawfirm.com

The Brame Law Firm P.C.

214.665.9464

Subject of Request (“Subject”)

Ratification of Administrative Law Judge Appointments signed by Steven T. Mnuchin on November 15, 2018

Documents Requested

1. All documents, cover letters, exhibits, and appendices that were attached to or submitted contemporaneously with the Ratification of Administrative Law Judge Appointments signed by Steven T. Mnuchin on November 15, 2018.
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This request is time sensitive. I have been ordered to provide a reply and comments to the OCC regarding the Subject of this request by no later than December 4, 2018. Therefore, we request compliance herewith by **December 3, 2018**. An email response is acceptable.

If you have any questions about the nature or scope of this request, please call me at the phone number listed above. If you determine that all or some portion of the information requested is excepted from required public disclosure under a particular exception, I request that you advise me as to which exceptions you believe apply.

Thank you for your timeliness and I await your response.

Sincerely,

A handwritten signature in black ink, appearing to read 'Frank C. Brame', with a stylized, cursive script.

Frank C. Brame

c. Bill Sims, Esq.

Frank C. Brame

From: Salamone, Frank <Frank.Salamone@occ.treas.gov>
Sent: Monday, November 19, 2018 4:13 PM
To: frank@bramelawfirm.com; Bill Sims
Cc: Swanson, Grant; D'Alessio, Christopher; Taran, Nathan
Subject: meet & confer
Attachments: OCC ALJ Ratification.pdf

Importance: High

Frank and Bill,

On Friday, Secretary Mnuchin signed the attached Ratification of Administrative Law Judge Appointments. To address this development, we will file a Motion for Leave to Amend OCC's Response to Respondents' Objections to Orders Issued by the Administrative Law Judge (Motion) around 5 p.m. Eastern tomorrow.

We are contacting you to meet and confer regarding this Motion. Please let us know whether you intend to oppose our Motion. We ask that you do so ASAP, but by no later than 3 p.m. Eastern tomorrow. If we do not hear from you, we will proceed as if you intend to oppose the Motion.

Please let us know if you would like to discuss further.

Thanks,

Frank C. Salamone
Counsel
Enforcement and Compliance Division
Office of the Comptroller of the Currency
400 7th Street, SW
Washington, D.C. 20219

office: (202) 649-6262
mobile: (202) 374-1372
fax: (571) 293-4550

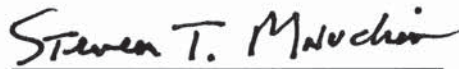
Attachment 1

RATIFICATION OF ADMINISTRATIVE LAW JUDGE APPOINTMENTS

I hereby ratify the assignment of C. Richard Miserendino and Christopher B. McNeil to the office of administrative law judge in the Office of the Comptroller of the Currency, under terms and conditions prescribed in Pub. L. 101-73, § 916 (12 U.S.C. § 1818 note) and 12 C.F.R. §§ 19.101 and 109.101, and I today approve their appointment as my own action under the Constitution.

NOV 15 2018

Date



Steven T. Mnuchin
Secretary of the Treasury

EXHIBIT B-5

Frank C. Brame

From: Frank C. Brame <frank@bramelawfirm.com>
Sent: Friday, February 08, 2019 10:11 AM
To: 'Michelle.Henshaw@treasury.gov'
Subject: RE: Automatic reply: Appeal of Denial of Expedited Treatment - FOIA Request 2018-11-128

Dear Michelle – Can you provide me a status update on my FOIA request? I have not heard anything. I have dialed the phone number you provided but the extension just rings and rings. Thanks, Frank

Frank C. Brame
The Brame Law Firm PLLC
frank@bramelawfirm.com
3333 Lee Parkway, Suite 600
Dallas, Texas 75219
214.665.9464 (office)
713.857.8925 (mobile)
www.bramelawfirm.com

From: Michelle.Henshaw@treasury.gov [<mailto:Michelle.Henshaw@treasury.gov>]
Sent: Thursday, December 20, 2018 5:47 PM
To: frank@bramelawfirm.com
Subject: Automatic reply: Appeal of Denial of Expedited Treatment - FOIA Request 2018-11-128

I am out of the office. I will respond as soon as I can when I return on December 21, 2018.

If you have a FOIA-related question please call 202/622-0930 (please listen for the prompts) or email TreasFOIA@Treasury.gov.

Thank you,

Michelle L. Henshaw

FOIA & Transparency
Privacy, Transparency, & Records
Main Phone 202-622-0930

Frank C. Brame

From: Frank C. Brame <frank@bramelawfirm.com>
Sent: Thursday, February 14, 2019 11:08 AM
To: 'Michelle.Henshaw@treasury.gov'
Subject: RE: FOIA 2018-11-128

Any update? Thanks, Frank

Frank C. Brame
The Brame Law Firm PLLC
frank@bramelawfirm.com
3333 Lee Parkway, Suite 600
Dallas, Texas 75219
214.665.9464 (office)
713.857.8925 (mobile)
www.bramelawfirm.com

From: Michelle.Henshaw@treasury.gov [<mailto:Michelle.Henshaw@treasury.gov>]
Sent: Friday, February 08, 2019 1:52 PM
To: frank@bramelawfirm.com
Subject: RE: FOIA 2018-11-128

Mr. Brame,

Just wanted to give you an update about your request. I've heard back from the program office and it is in the final review process. I'll check back with them next week and let you know what I find out.

I am out of the office on Monday, but wanted let you know what I found out.

Have a great weekend.

Michelle Henshaw
Case Manager, FOIA & Transparency
Privacy, Transparency, and Records
Michelle.Henshaw@treasury.gov
Desk Phone: 202-622-0875

From: Frank C. Brame <frank@bramelawfirm.com>
Sent: Friday, February 8, 2019 11:12 AM
To: Henshaw, Michelle <Michelle.Henshaw@treasury.gov>
Subject: RE: FOIA 2018-11-128

Hi Michelle. Just following up on this. Any developments? Thanks, Frank

Frank C. Brame
The Brame Law Firm PLLC

frank@bramelawfirm.com

3333 Lee Parkway, Suite 600

Dallas, Texas 75219

214.665.9464 (office)

713.857.8925 (mobile)

<https://hyperlink.services.treasury.gov/agency.do?origin=www.bramelawfirm.com>

From: Michelle.Henshaw@treasury.gov [mailto:Michelle.Henshaw@treasury.gov]

Sent: Wednesday, December 19, 2018 9:30 AM

To: frank@bramelawfirm.com

Subject: FOIA 2018-11-128

Good morning Mr. Brame,

Attached is a copy of our correspondence regarding your request. Currently a search for responsive records is being done.

Thank you,

Michelle Henshaw

Case Manager, FOIA & Transparency

Privacy, Transparency, and Records

Michelle.Henshaw@treasury.gov

Desk Phone: 202-622-0875

Frank C. Brame

From: Juanita.Baker@treasury.gov
Sent: Friday, February 15, 2019 1:27 PM
To: frank@bramelawfirm.com
Subject: 2018-11-128 FOIA Request Final Response
Attachments: 2018-11-128 FOIA Request Request.pdf; Ratification of Administrative Law Judge Appointments Final 11-15-18_Redacted.pdf; 2018-11-128 Letter_Final_Signed.pdf

Good Afternoon Mr. Brame,

Attached is Treasury's final response to your FOIA Request 2018-11-128.

Thanks,

Juanita Baker
FOIA and Transparency
Privacy, Transparency, and Records
Department of Treasury
Juanita.Baker@treasury.gov



DEPARTMENT OF THE TREASURY
WASHINGTON, D.C.

February 15, 2019

RE: 2018-11-128

Mr. Frank Brame
The Brame Law Firm
3333 Lee Parkway Suite 600
Dallas, TX 75219
Email: frank@bramelawfirm.com

VIA ELECTRONIC MAIL

Dear Mr. Brame:

This is the Department of the Treasury's (Treasury) final response to your Freedom of Information Act (FOIA) request dated November 26, 2018. You requested: (1) all documents, cover letters, exhibits, and appendices that were attached to or submitted contemporaneously with the Ratification of Administrative Law Judge Appointments signed by Steven T. Mnuchin on November 15, 2018; and, (2) all documents provided to or reviewed by Steven T. Mnuchin (or his staff) prior to signing the Ratification of Administrative Law Judge Appointments signed by Steven T. Mnuchin on November 15, 2018.

Your request has been processed under the provisions of the FOIA, 5 U.S.C. § 552. Treasury's Departmental Offices (DO) conducted a search and located one responsive record. After carefully reviewing the document, I am releasing 5 pages in full and 7 pages in part. The withheld information is protected from disclosure under the FOIA pursuant to 5 U.S.C. § 552(b) (5) and (6).

FOIA Exemption 5 protects "Inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency." Courts have construed this somewhat opaque language to "exempt those documents, and only those documents that are normally privileged in the civil discovery context." The three primary, most frequently invoked privileges that have been held to be incorporated into Exemption 5 are the deliberative process privilege, the attorney work-product privilege, and the attorney-client privilege. The responsive records are part of the decision making process and must be withheld to protect the integrity of opinions and recommendations of the agency.

FOIA Exemption 6 provides protection for records and information the disclosure of which would constitute a clearly unwarranted invasion of personal privacy. This requires a balancing of the public's right to disclosure against the individual's right to privacy. The privacy interests of the individual in the records you have requested outweigh any minimal public interest in disclosure of the information.

There are no fees assessed at this time since allowable charges fell below \$25.

Since Treasury's response constitutes an adverse action, you have the right to appeal this determination within 90 days from the date of this letter. By filing an appeal, you preserve your rights under FOIA and give the agency a chance to review and reconsider your request and the agency's decision. Your appeal must be in writing, be signed by you or your representative, contain the rationale for your appeal, and cite the FOIA reference number noted above. Please address your appeal to:

FOIA Appeal
FOIA and Transparency
Privacy, Transparency and Records
Department of the Treasury
1500 Pennsylvania Avenue, N.W.
Washington, DC 20220

If you would like to discuss this response before filing an appeal to attempt to resolve your dispute without going through the appeals process, you may contact Treasury DO FOIA Public Liaison, Paul Levitan, at (202) 622-0893 or email FOIAPL@treasury.gov.

If you are unable to resolve your FOIA dispute through our FOIA Public Liaison, the Office of Government Information Services (OGIS) also mediates disputes between FOIA requesters and federal agencies as a non-exclusive alternative to litigation. If you wish to contact OGIS, you may write directly to:

Office of Government Information Services
National Archives and Records Administration
8601 Adelphi Road – OGIS
College Park, MD 20740-6001
ogis@nara.gov
ogis.archives.gov
(202) 741-5770
(877) 684-6448

If any questions arise concerning this action, please contact Juanita Baker at (202) 622-0930 or email FOIA@treasury.gov. Please reference FOIA request 2018-11-128 when inquiring.

Sincerely,

Paul

Levitan

Paul Levitan

Director, FOIA & Transparency

Digitally signed
by Paul Levitan
Date:

2019.02.15
13:45:34 -05'00'

Treasury DO 2018-11-128

SharePoint

Newsfeed

OneDrive

Sites



Title

Online FOIA ID 22979555e92540a2a3387c759c24c30f

First Name FRANK

Middle Initial N/A

Last Name BRAME

Company Organization The Brame Law Firm

Phone Number 2146659464

Other Phone Number N/A

Fax Number N/A

Street Address Line1 3333 Lee Parkway

Street Address Line2 Suite 600

City Dallas

State TX

Zip 75219

Country United States

Email Address frank@bramelawfirm.com

Delivery Method Electronic Copy

Bureau Departmental Offices (Headquarters)

Description

In accordance with the Freedom of Information Act ("FOIA"), I make the following requests for information.

This request is made under FOIA and any statute providing for public access to government information.

This firm is counsel to Saul Ortega and David Rogers. The purpose of this request is to gather public records about the administrative law judges who are conducting the following hearing against my clients: In re Saul Ortega and David Rogers, AA-EC-2017-44 & 45, In the Office of the Comptroller of the Currency (the "Enforcement Action").

I request that I be sent copies of the following documents or, if there are a large number, be permitted to inspect the following documents and receive one copy of the ones I would like. Either electronic or paper format is fine. I will pay fees assessed under FOIA. If the fees will exceed \$500, I would like you to contact me first.

Subject of Request ("Subject")

Ratification of Administrative Law Judge Appointments signed by Steven T. Mnuchin on November 15, 2018

Documents Requested



1. All documents, cover letters, exhibits, and appendices that were attached to or submitted contemporaneously with the Ratification of Administrative Law Judge Appointments signed by Steven T. Mnuchin on November 15, 2018.

2. All documents provided to or reviewed by Steven T. Mnuchin (or his staff) prior to signing the Ratification of Administrative Law Judge Appointments signed by Steven T. Mnuchin on November 15, 2018. If you have any questions about the nature or scope of this request, please call me at the phone number listed above.

Fee Category Commercial Use

Request Type FOIA

Request Fee Waiver	0
Request Expedited Processing	1
Will Pay Up To	500
Enter Electronic Signature Code	22979555e92540a2a3387c759c24c30f
Full Name	N/A
Created Date	11/26/2018 11:39:00 AM
UserRefCode	22979555e92540a2a3387c759c24c30f
Processed Status	2018-11-128 site created on 11/26/2018 5:53:54 PM
Expedited Processing Justification	This request is time sensitive. I have been ordered to provide a reply and comments to the OCC regarding the Subject of this request by no later than December 4, 2018. Therefore, we request compliance herewith by December 3, 2018. An email response is acceptable.
Expedited Request Date	2018-11-26 11:38:58
Fee Waiver Justification	N/A
Fee Waiver Request Date	N/A

Created at 11/26/2018 11:40 AM by  SpAdmin
Last modified at 11/26/2018 5:53 PM by  Tischer, Margaret

Close

EXHIBIT B-7



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February 18, 2019

Sent By U.S. Mail and Email

FOIA APPEALS
FOIA and Transparency
Privacy, Transparency and Records
Department of the Treasury
1500 Pennsylvania Ave, NW
Washington, D.C. 20220

Re: 2018-11-128 – APPEAL

To FOIA Appeals:

This firm represents Saul Ortega and David Rogers in an administrative enforcement proceeding before the Office of the Comptroller of the Currency. On November 26, 2018, I sent a FOIA request online, seeking documents on behalf of Mr. Ortega and Mr. Rogers. That request is attached. Due to deadlines in the administrative proceeding, the request sought expedited treatment. As I received no response within the time period requested or under the deadlines allowed by law, I followed up on December 7 and then again on December 17. I again followed up on February 8 and on February 14.

On February 15, 2019, I received the attached response from Paul Levitan which included 13 pages of heavily redacted records. According to Mr. Levitan, these extensive redactions constituted an “adverse action” on my request for documents under FOIA. This adverse action is based on citations to 5 U.S.C. § 552(b)(5) and (6).

By this letter, I appeal the adverse action on the FOIA request on the following grounds:

1. Treasury's denial of my request for documents was untimely. As such, the Treasury Department has waived its alleged objections to the production of documents. Setting aside that our request for expedited treatment was ignored and not timely considered, a response was due within twenty days of November 26, 2018. The only response we received before February 15, 2019, was a letter on December 19, 2018 denying our request for expedited treatment. (We appealed that denial on December 20 and that appeal was ignored.)

2. Treasury's assertions of privilege are not valid and have been waived because they are generic boilerplate assertions that do not invoke the protections of any privilege. To assert a privilege, a party must identify the privilege and describe the information withheld. "A blanket assertion of privilege is insufficient."¹ Here, Treasury makes a generic statement that the withheld information is essentially that which is "normally privileged in the civil discovery context. The three primary, most frequently invoked privileges that have been held to be incorporated into Exemption 5 are the deliberative process privilege, the attorney work-product privilege, and the attorney-client privilege." This shotgun approach is not permissible. According to Judge Higginbotham, "enough information must be supplied so that the court can determine whether the asserted privilege is applicable." Here, one cannot tell what privilege is even being asserted, let alone whether it is applicable.

3. No privilege applies here. The substance of what has been redacted is unknown to us, but they do not appear to be covered by any privilege. The deliberative process privilege does not cover factual matters or decisions. The attachment 1 to the memo from Joseph M. Ottig appears to be an appointment document that could not possibly be covered by any privilege. We suspect many of the other redacted items are similar in nature.

4. Even if the deliberative process privilege applied to some of the redacted sentences, such privilege is only a qualified privilege and can be overcome. *Harding v. Dallas County*, 2016 U.S. Dist. LEXIS 177937, *32-34

¹ Judge Patrick E. Higginbotham, MOORE'S FEDERAL PRACTICE § 26.90.

(N.D. Tex. 2016). In this case, the Appointments Clause of the United States Constitution and the Supreme Court cases interpreting it require that OCC ALJs be actually appointed by the Secretary of the Treasury. The law strictly prohibits the diffusion of the appointment power among various officials, including the delegation of such power to a lower official such as Mr. Ottig. Thus, it is of great importance to determine whether Secretary Mnuchin made an appointment or whether he simply was asked to sign off, retroactively, on an appointment actually made by someone else like the Office of Personnel Management or the OCC. The documents sought will prove or disprove whether the Constitution was followed in this instance. Because this information is highly relevant and goes to an extremely serious matter, any deliberative process concerns are outweighed in this case.

5. Finally, we object to the application of the deliberative process privilege under the “secret law” exception thereto, because the government attempts to hide under a veil of privilege its appointments.

For the reasons stated above, we respectfully submit the above appeal and request that all redacted material be provided. Should you have any questions, please feel free to contact me.

Sincerely,



Frank C. Brame

- c. Bill Sims, Esq. (by email)
- FOIA Public Liaison (by email)
- Office of Government Information Services (by email)
- Michelle Henshaw (by email)